

ERGOTEC ASSOCIATION, INC.

Human Engineering Non-Profit

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Att: William Caton
Secretary of the Commission
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

February 13, 1995

RECEIVED

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

RESPONSE TO RULEMAKING PETITION NO. 8577 Published in *FCC Public Notice* - January 18, 1995

Please accept this letter in response to Petition for Rulemaking, FCC No. 8577, filed by the Cellular Telecommunications Industry Association (CTIA) on December 22, 1994. The attachment herewith (*Wall Street Journal* article and *FCC Public Notice*), which had limited distribution, was the only means by which the public could be informed of the impending action of the Federal Communications Commission (FCC). In essence, the public received **short or NO notice** regarding the above petition. Ergotec, on behalf of citizens nationwide, opposes CTIA's petition to the FCC to override state and local regulations with respect to the installation of microwave towers and antennas. The legal test for pre-emption, requested by CTIA, cannot be met because the United States Constitution permits states and localities to set reasonable regulations to protect the public safety and welfare of citizens. This inherent right, specifically granted by the 10th Amendment of the Constitution of the United States, has also been **incorporated in State Constitutions**. State regulations **do not prevent** the building of towers and installation of antennas. States only seek to regulate antenna power and transmission frequencies in order to protect the health, safety, and welfare of citizens as stipulated in state and local government charters. Banning state and local regulations, as requested by CTIA, jeopardizes the health, safety, and welfare of citizens.

By its petition, CTIA wants to obtain a blanket guarantee from FCC. The guarantee, an exchange for the purchase of FCC licenses, allows CTIA members to install microwave antennas wherever industry chooses, without citizen objection. CTIA's petition gags citizens. It forces people to meekly accept microwave tower installations that will invariably damage their health and property.

FCC's power comes from Congress, a body of elected officials that represent United States citizens. To date, Congress has put no legislation before the people asking them to relinquish their inherent, God given, rights to protect their health and property. In other words, Congress has not yet officially ordered citizens to donate their cherished possessions (life,

liberty, happiness) for the advancement of industry. So, there is ***NO congressional mandate or action*** allowing FCC to ***pre-empt*** state and local regulations ***for any purpose***, particularly one which merely benefits industry. Therefore, ***FCC, a federal agency, has NO CONSTITUTIONAL nor LEGAL or LEGISLATIVE RIGHT to challenge state and local regulatory procedures*** in this or any matter.

It is inappropriate for FCC to force its judgment, regarding antenna construction, against the policies of states and communities. **Congress has chosen to remain silent** on this matter, and allow reasonable regulation of tower and antenna construction by state and local governments. Therefore, FCC cannot justify forcing pre-emption of state and local government regulations. FCC's action threatens the environment, human rights, and human health. FCC's action is unconstitutional!

Based on the fact that it violates state and local laws as put forth in the 10th Amendment of the Constitution of the United States, Ergotec respectfully requests FCC to abandon CTIA's petition itemized as Rulemaking 8577. The primary reasons are that it is improper for FCC to obviate rules that were carefully designed by state and local governments to protect the integrity of their people and ecosystems, and the public was not duly notified. Ergotec's strong argument is valid in light of the fact that ***NO FEDERAL POLICY ADDRESSES PRE-EMPTION OF STATE and LOCAL LAWS.***

In addition to the foregoing, pre-emption of state and local laws to benefit and placate industry violates FCC's own guidelines and those it hopes to adopt, namely the 1992 ANSI standard being reviewed under Docket 93-62. Pre-empting state and local laws leads to the unintentional dereliction of duty by state and local governments. They will be unable to protect the health and wellbeing of citizens because: (1) FCC mandated the tower and antenna installations, and thereby approval of free human irradiation. (2) FCC sanctioned industry's willful destruction of health and property for the sake of economic prosperity. (3) Since the public was not notified of industry's intention, and FCC's action, the environment and health of the masses will be damaged without people's knowledge and informed consent.

Ergotec urges FCC to act responsibly for the sake of humanity. Thank you for your immediate consideration of this matter.

Respectfully,



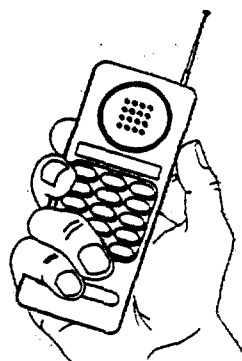
Bert Dumpé - Principal
ERGOTEC ASSOCIATION

cc: Nine (9) FCC Commissioners
President Clinton
Honorable R. Packwood (Senate); J. Fields, E. Markey (House)
ANSI Standard Docket 93-62
Distribution

RADIO FREQUENCY BANDS AND THEIR USES

Frequency	Band Designation Frequency	Typical Uses
0-30 Hz	<i>S-ELF</i> (Sub-Extremely Low Frequency)	Direct current (DC) powerlines to carry electricity afar
30-300 Hz	<i>ELF</i> (Extremely Low Frequency)	Powerlines, submarine communications
0.3-3kHz	<i>VF</i> (Voice Frequency)	Human voice and audio frequencies
3-30 kHz	<i>VLF</i> (Very Low Frequency)	Very long-range communications, and human audio frequencies
30-300 kHz	<i>LF</i> (Low Frequency)	Long-range communications
0.3-3 MHz	<i>MF</i> (Medium Frequency)	AM broadcast, radio navigation, marine radio phone
3-30 MHz	<i>HF</i> (High Frequency)	Voice of America, international communications
30-300 MHz	<i>VHF</i> (Very High Frequency)	Commercial diathermy, emergency medical radio, air traffic control
0.3-3 GHz	<i>UHF</i> (Ultra High Frequency)	UHF television, microwave ovens, medical diathermy; cellular, <i>PCS base stations</i>
3-30 GHz	<i>SHF</i> (Super High Frequency)	Satellite communications; taxi, police, fire, weather radar
30-300 GHz	<i>EHF</i> (Extremely High Frequency)	Satellite communications, radar, microwave relay, amateur radio; <i>PCS satellite to earth links</i>
300-3000 GHz	<i>S-EHF</i> (Super Extremely High Frequency)	Not allocated

Adapted from National Council on Radiation Protection (NCRP)
Report No. 86, April 1986



PCS
1.8 to 2 GHz
38 GHz

WALL STREET JOURNAL

FRIDAY, DECEMBER 23, 1994

Wireless Industry Asks U.S. to Force Approval Of New Tower Sites

By a WALL STREET JOURNAL Staff Reporter
WASHINGTON — The federal government, which is auctioning licenses for wireless-communication systems, is being asked to force local officials to approve towers to deliver the new services.

A trade group for the wireless industry asked the Federal Communications Commission to pre-empt state and local regulations that could prevent the towers from being built. The group, the Cellular Telecommunications Industry Association, cited recent legislation that prohibits state and local governments from regulating entry into mobile-telecommunications services.

The so-called personal communications services are variations on cellular-telephone service. So far, in 13 days of auctions, the government has received bids totaling \$1.66 billion for licenses to establish the new systems. FCC Chairman Reed Hundt yesterday said that represents "the highest auction of public property in world history."

PCS, by the industry's own estimates, could require as many as 100,000 tower sites by 2000, compared with 15,000 sites for cellular phone service.

Still, Gina Keeney, who heads the FCC's wireless division, said the agency may need new legislation to override local authorities. "It would give us a stronger case," she said.



PUBLIC NOTICE

Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

News media information 202/632-5050. Recorded listing of releases and texts 202/632-0002.

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333 and 2(b)

Cellular Telecommunications Industry Associations

12-22-94

January 18, 1995

Michael P. Altschul,
Vice President, General Counsel
Randall S. Coleman, Vice President
for Regulatory Policy and Law
1250 Connecticut Avenue N.W.
Suite 200
Washington, D. C. 20036)

Request Amendment of
Commission's Rules to
Preempt State and Local
Regulation of Tower
Siting for Commercial
Mobile Services and
Providers.